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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,782	02/08/2002	James D. Webb	P-8712.02	2705

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MEDTRONIC, INC.
710 MEDTRONIC PARKWAY NE
MS-LC340
MINNEAPOLIS, MN 55432-5604

EXAMINER	
MALLARI, PATRICIA C	
ART UNIT	**PAPER NUMBER**
3736	9

DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/072,782	WEBB ET AL.	
	Examiner	Art Unit	
	Patricia C. Mallari	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 July 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *08 February 2002* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: claim 26 recites "encrypting the request on the server at a second selected time in response to notification that a monitor at a second location is substantially ready to receive the request". However, the specification makes insufficient mention of such a *notification* and further lacks ample description of encrypting a request in response to such a notification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10, 13-19, 22-27, and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell in view of US Patent No. 6,168,563 to Brown ('563). Snell teaches a system 100 wherein a clinician may use a server 102 to provide at least one request (programming commands) to modify the behavior of an implantable medical device 105 via a monitor 104 that receives the at least one request form the server 102 and transmits the request to the implantable medical device 105 at a second selected time via a bi-directional communications system 107 adapted to couple the server and the monitor. The monitor 104 updates the implantable medical device 105 using a telemetry system 120 inherently using radio frequency. Appropriate security

measures and data integrity checks are implemented using any hardware and software means, such as communications protocols, handshaking, and encryption, in order to ensure the validity of data exchanged between the programmer 104 and the server 102 (fig. 1, Table I; col. 5, line 55-col.6, line 15). Snell is silent as to how the physician accesses the server.

However, Brown teaches that a healthcare professional may access a server 54 using a programmer 62 to upload message and/or instructions regarding a user's healthcare program for transmittal to the user's monitor12. Once the communication is established, the professional can transmit an authorization code to server (clearinghouse) 54 that identifies the healthcare professional as an authorized user of the clearinghouse and can transmit a signal representing the patient for which healthcare information is being sought (fig. 2). Therefore, it would have been obvious at the time of invention to combine the system of Brown ('563) with the system of Snell, since Snell discloses uploading information to a server, and Brown describes an appropriate means of doing so. The combination would additionally maintain appropriate safety levels for patients being treated with the network programmer.

The applicant should note that, in all the apparatus claims, the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Claims 11, 12, 20, 21, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell in view of Brown ('563), as applied to claims 1-10, 13-19, 22-

27, and 30-32 above, and further in view of US Patent No. 6,440,068 to Brown et al. ('068). Snell, as modified, lacks a Virtual Private Network or Secure Socket Layer connection as the secure bi-directional communications system. However, Brown et al. discloses that health data exchange may be transmitted in a secure manner via encryption or by technologies, such as secure socket layer (SSL) or virtual private networks (VPN) (col. 4, lines 49-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use SSL or VPN as part of the security measures in Snell, as modified by Brown ('563), since the system of Snell, as modified, includes any appropriate means as security measures and data integrity checks and Brown et al. ('068) teaches SSL and VPN as such appropriate means. This combination would further ensure appropriate safety levels for patients being treated with the network programmer.

Response to Arguments

Applicant's arguments with respect to claims 1-10, 13-19, 22-27, and 30-32 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 6,494,831 to Koritzinksy.

US Patent No. 6,477,424 to Thompson et al.

US Patent No. 5,720,770 to Nappholz et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia C. Mallari whose telephone number is (703) 605-0422. The examiner can normally be reached on Mon-Fri 9:30 am-7:00 pm (alternate Fri. off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on (703) 308-3130. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-8117 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Patricia Mallari

pcm

Robert L Nasser Jr

ROBERT L. NASSER
PRIMARY EXAMINER